

The complaint

This complaint is about a business loan Mr E holds with The Royal Bank of Scotland Plc (RBS). The essence of the complaint is that Mr E believed the loan was mis-sold when he took it out. He says RBS failed to do due diligence on the business he was buying. Mr E says the staff member handling the application misled him into thinking his solicitor and accountant had been consulted for advice and assistance in that due diligence.

What happened

The broad circumstances of this complaint are known to all parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr E being identified.

Instead I'll give a summary of the key issues (and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr E took the loan out in 2009 to fund the acquisition of a business. Over time, it became apparent that the business in question wasn't all that Mr E had anticipated. Technical equipment presented as being owned was in fact leased, and much of the client base turned out to be fictitious. Mr E engaged in difficult and complex fraud litigation with the vendors; meanwhile, the business loan with RBS was restructured in 2014 and again in 2017. It's my understanding that Mr E has met all the loan repayments over the years.

In 2024, Mr E complained that the loan had been mis-sold. RBS rejected the complaint; Mr E referred it to our service. Our investigator said that he couldn't look into whether the loan had been mis-sold in 2009. He concluded that the complaint had been made too late under our rules.

But the investigator also said that we could consider whether there had been an unfair relationship between RBS and Mr E as a result of the way the loan application was assessed - taking into account all matters relevant to the fairness of that relationship whenever they occurred, and even where they are time barred if subject to a complaint in their own right.

However, he considered that no unfair relationship had been created as a result of how the application had been assessed and that RBS hadn't acted unfairly towards Mr E in its operation of the loan.

Mr E asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Having done so, what follows are my conclusions and the reasons for them. I'll start by addressing the questions Mr E has raised about the availability (and authenticity) of evidence RBS has supplied.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture. It's also for us to decide when we have enough evidence to reach a fair conclusion. Mr E is free to raise any concerns he might have about RBS' records with the Information Commissioner's Office. From my own perspective, I'm satisfied I can reach a fair decision on the basis of what the parties have said and provided.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometimes mean reaching a different outcome from what might prevail in court.

We revisit jurisdiction at every stage of our case-handling process. When I do that here, I agree with the investigator that the underlying complaint of mis-selling is time-barred under our rules. The event giving rise to the complaint happened in 2009 and the rules give Mr E six years to raise his complaint. He's said he did that at the time of the loan re-structures in 2014 and 2017, but our rules require there to be an acknowledgement, or some other written record, of a complaint having been received by the business.

In Mr E's case the earliest written record of an expression of dissatisfaction about the sale of the loan was the one from 2024 I'm looking at here. That's clearly more than six years after the event giving rise to the complaint. It's also more than three years after Mr E ought reasonably to have been aware he might have cause to complain. Based on his own testimony about what he thinks RBS failed to do, I consider Mr E ought reasonably to have known he might have cause for complaint once the problems with the business came to light, which he has told was around July 2011.

RBS hasn't consented to us considering the mis-selling complaint and to be clear, under our rules, it doesn't have to. That means I could only set aside the time limits I've outlined above if I thought exceptional circumstances had prevented the time limits from being met. The test I have to apply, and it is an onerous one, is not just whether exceptional circumstances existed, but also whether those circumstances are the reason the complaint wasn't referred to us in time.

Again, based on Mr E's own testimony, I don't consider that test to have been met. Mr E has told us that, on legal advice, he prioritised the legal dispute with the vendor and that he only felt safe alerting RBS once the litigation was over, which was in 2013. But as I explained earlier, there needs to be a written record of a complaint being made, and there isn't one before 2024. Overall, I'm not persuaded that Mr E was *prevented* from starting his complaint within the time limits.

Putting all of the above together, I share the investigator's view that the underlying complaint of mis-selling is time-barred under our rules. However, I can consider whether there has

been an unfair relationship between RBS and Mr E as a result of the way the loan application was assessed and then the loan subsequently operated.

It seems to me that, at its core, the case for an unfair relationship having been created in the first place is based on a belief on Mr E's part that RBS should have done more in the way of due diligence around the viability of the business Mr E was buying. The inference is that had it done so, Mr E would not have been allowed to borrow the money.

If that is the case, then I'm afraid I must disappoint Mr E. It wasn't RBS' responsibility to conduct due diligence on the business he was seeking to acquire; that was a matter for him, and the notes from the time indicate he had employed his own professional advisors to do that. A separate note from RBS' records dated 28 May 2014 suggests Mr E was pursuing legal claims against his advisors in respect of the work they had done.

The due diligence that RBS was required to do was into Mr E's ability to afford the loan repayments. RBS reviewed the income streams he already had and projections for the new business, but also noted that Mr E wasn't intending to draw an income from it. From that, I've inferred that the loan was deemed affordable by RBS based on Mr E's existing income streams. It's not my role to second guess a lender's commercial judgement in connection with unregulated commercial borrowing, or to substitute my own (or Mr E's judgement) in place of that of RBS. Generally speaking though, the assessment RBS made doesn't strike me as unreasonable, or lacking in care to the extent that lending the money would have created an unfair relationship.

Mr E has cited a clause in the loan agreement referring to a pre-condition that RBS be satisfied with advice from the solicitors on the price being paid. There's very little evidence on what happened in this regard. I don't find anything sinister in that; these are events from sixteen years ago. All that is available is a contemporaneous note in RBS' records indicating that all conditions had been signed off on 10 November 2009. All this condition requires is that RBS was satisfied that solicitors had advised Mr E about the purchase price of the business. It doesn't require RBS to carry out its own investigations or second guess that advice. I've no reason to believe this condition wasn't fulfilled at the time, or that it obliged RBS to do more than satisfy itself there was likely to be good security for the lending.

As far as the operation of the loan during its lifetime is concerned, Mr E says that once the problems with the business came to light, RBS should have been open about its error and made amends. Instead he says it concealed its error, became complicit in the fraud, and refinanced the debt in his personal name with different security.

I'd begin by observing that the loan was always in Mr E's personal name from the outset in 2009. Also, I should reiterate that I haven't found that RBS made an error. The loan's been restructured twice, in 2014 and 2017 respectively. The first of these took into account the conclusion of the litigation, which amongst other things meant the removal of the business premises (the lease for which Mr E had relinquished) as security. So the change in security was a necessity rather than an action that might have created unfairness in the relationship. Meanwhile, I haven't seen anything else in either the 2014 or 2017 restructure that might give me reason to find that RBS had introduced an unfair element to the existing relationship where none had existed previously.

I appreciate how strongly Mr E feels; I'm not unsympathetic towards his current situation and the experiences he has gone through in the years since he acquired the business. It seems to me that Mr E's difficulties arise from the business he chose to buy – and it wasn't RBS's role to advise him about the wisdom of that purchase. But after considering everything that both parties have said and provided, I'm not persuaded that the circumstances in which Mr E's commercial loan operated created a relationship between RBS and Mr E that is unfair, or

that there was (or is) any ongoing unfairness in that relationship that RBS is under an obligation to remedy.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 June 2025.

Jeff Parrington

Ombudsman